IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY THIRD DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI JUSTICE N.V. RAMANA

WRIT PETITION NO.27032 of 2001

Between:

P. Yakaiah, S/o. Pedda Sailu,
Nellikudur Village and Mandal, Warangal District.

..... PETITIONER

AND

1 The District Panchayat Officer,
Warangal.
2 The Extension Officer (PR&RD)
Nellikudur Village and Mandal, Warangal District.

....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue writ or direction preferably writ of mandamus declaring the notice vide Rc.No. 1915/2001/A2 dt:18-12-2001 issued by the 1st respondent as illegal, arbitrary and violative of principles of natural justice and consequently direct the respondents to allow the petitioner as ward member of Nellikudur Gram Panchayat of Warangal District since he has been duly elected.

Counsel for the Petitioner: MR.KOWTURU VINAYA KUMAR

Counsel for the Respondents: GP FOR PANCHAYAT RAJ & RURAL DEV.

The Court made the following:

ORDER:

This writ petition is filed seeking a Mandamus declaring the Notice Rc. No. 1915/2001/A2, dated 18-12-2001 issued by the 1st respondent-District Panchayat Officer as illegal and arbitrary and consequently to direct the respondents to allow the petitioner as Ward Member of Nellikudur Gram Panchayat of Warangal District.

The case of the petitioner, in brief, is that in the Grampanchayat elections held on 17.08.2001 he was elected as a Ward Member from Ward No.11 of Nellikudur Gram Panchayat of Warangal District. It is stated that at the time of scrutiny of his nomination papers, when his opposite party resisted his nomination on the ground that he was having third child, the petitioner is stated to have produced the birth certificate of his daughter and on verification of the same the election authority, having satisfied that the date of birth of petitioner's daughter i.e., 02.12.1994 was much prior to the cut of date, has rejected the said objection raised by his opposite party and accepted the nomination of the petitioner. It is stated that the Revenue Divisional Officer also rejected even the appeal filed against the acceptance of nomination of the petitioner. The grievance of the petitioner is that the 1st respondent, without issuing any notice and without providing any opportunity of being heard, issued the impugned Notice dated 18.12.2001 disqualifying him as a Ward Member on the ground that his third child was born on 02.09.1996. Hence, he filed the present writ petition.

Heard the learned counsel for the petitioner and the learned Government Pleader for Panchayat Raj and Rural Development.

Learned counsel for the petitioner while reiterating the averments made in the affidavit filed in support of the writ petition further submits that the 1st respondent, without issuing any notice and without affording any opportunity of being heard to the petitioner, passed the impugned orders disqualifying the petitioner from the post of Ward Member. He further submits that under Section 19(3) read with Section 22 of the Andhra Pradesh Panchayat Raj Act, 1994 the 1st respondent-District Panchayat Officer has no authority or jurisdiction to disqualify the petitioner from the post of Ward Member.

A perusal of the impugned notice dated 18.12.2001, issued by the 1st respondent-District Panchayat Officer, Warangal, shows that the petitioner was disqualified to be a Ward Member of Nellikudur Gram Panchayat under Section 19(3) read with Section 22 of the Andhra Pradesh Panchayat Raj Act, 1994, on the ground that his third child was born on 02.09.1996. The short question involved in this writ petition is whether the 1st respondent is empowered to disqualify the petitioner straightaway from continuing as Ward Member of the said Panchayat by the impugned proceedings issued under Section 19(3) read with Section 22 of the A.P. Panchayat Raj Act, 1994.

As per Section 22 of the A.P. Panchayat Raj Act, 1994, if any allegation is made against any person, who is elected as a member of Gram Panchayat, the 1st respondent-District Panchayat Officer has to refer the dispute on an application to the District Munisif having jurisdiction over the area in which the office of the Grampanchayat is situated and the 1st respondent-District Panchayat Officer cannot straightaway disqualify the petitioner. This view was also taken by the Division Bench of this Court in **Chava Rosaiah v. Chintala Venkateswarlu and another.**

Since the 1st respondent-District Panchayat Officer has no jurisdiction to disqualify the petitioner from the post of Ward Member under Section 19(3) read with Section 22 of the Andhra Pradesh Panchayat Raj Act, 1994, the impugned notice dated 18.12.2001 disqualifying the petitioner to be a Ward member of the Nellikudur Gram Panchayat can not be sustained and is liable to be set aside.

Accordingly, the writ petition is allowed and the impugned order dated 18.12.2001 is set aside. However, this order does not preclude the respondents to

take an appropriate action for referring the matter to the District Munisif having jurisdiction over the area in which the Grampanchayat is situated. No costs.

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N.V. RAMANA, J.

Date: 23.06.2005

Nsr/Ksr

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Bilal Nazki the Acting Chief Justice on this

Thursday, the Twenty Third day of June, Two Thousand and Five

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The District Panchayat Officer,
Warangal.
2 The Extension Officer (PR&RD)
Nellikudur Village and Mandal, Warangal District.

3 Two CCs to GP for Panchayat Raj and Rural Development, High

Court Buildings, Hyderabad (OUT)

4 2 CD copies

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